STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 19,150
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services, withholding all of her retroactive SSI benefits as reimbursement for General Assistance (GA) paid to the petitioner during the pendency of her SSI application. The issue is whether such withholding and recovery is consistent with the pertinent regulations and with the terms of the "Recovery of Assistance (RA) Agreement" signed by the petitioner before she received GA.

Following its meeting on December 8, 2004, the Board remanded the matter to the hearing officer for further hearing on the petitioner's factual allegations. Hearings for this purpose were held on January 21 and March 15, 2005.

FINDINGS OF FACT

1. Starting in 2002 the petitioner was a recipient of GA benefits. It appears she made one or several applications for SSI disability benefits during this time. In June 2004 she was notified that she had been found eligible for SSI

retroactive to March 2004. The amount of her initial retroactive SSI payment for the months March, April, and May 2004 was $1,848.12 ($616.04 for each month).

2. On May 24, 2002, and again on May 21, 2003, the petitioner signed a "Recovery of Assistance Agreement" with the Department whereby she agreed that as a condition of receiving GA her initial SSI check would be sent to the Department, which would deduct from it the total amount of GA the Department had paid to the petitioner during the period for which she was retroactively found eligible for SSI.

3. The petitioner was paid at least $2,477.45 in GA by the Department from March through May 2004, the months in which she was found retroactively eligible for SSI. In June 2004, the Social Security Administration, per its policy and federal regulations (not at issue here), sent the petitioner's retroactive SSI check of $1,848.12 directly to the Department. The Department then notified the petitioner that it had applied all of this amount toward the GA it had paid the petitioner during those months.

4. Except for $100 that the Department can't specifically account for (which the hearing officer has taken into account in Finding No. 3, *supra*), the petitioner does not dispute the Department's calculation of the amount of GA

she received during the pendency of her SSI. She also does not dispute that she signed the recovery agreements in 2002 and 2003.

5. The petitioner's primary argument is that the GA recovery agreement she signed in May 2003 expired under its own terms before she was found eligible for SSI in June 2004. The portions of the agreement relied on by the petitioner provides as follows:

> I, the undersigned, authorize the Secretary of the United States, Department of Health and Human Services (USDHHS), to send my initial payment of Supplemental Security Income (SSI) benefits to the Vermont Department of Social Welfare.
>
> I further authorize the Vermont Department of Social Welfare to deduct from my initial payment an amount equal to the sum of all public assistance benefits . . . made to, or on behalf of, me by the Department of Social Welfare beginning with the first day of the month that I am found eligible for an SSI payment and ending with the month SSI payments begin.
>
> . . .
>
> I further understand that this authorization is effective for one (1) year from the date I sign it and that it will cease to have effect at the end of one (1) year from the date I sign it unless I have already filed for SSI or I file for SSI within one (1) year after signing this form. In addition, this authorization will become effective on the date that any of the following events occur:
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> - The Secretary of the U.S. DHHS makes an initial payment on my claim. . .

6. The petitioner also disputes the amount of SSI the Department should be allowed to withhold. The parties agree that much of the GA the petitioner received during the months of March through May 2004 was in the form of voucher payments to the motel in which the petitioner was residing. The petitioner alleges, however, that she offered to stay at a cheaper motel, but that her GA worker told her "not to worry about it". The petitioner maintains that the other motel was $100 a week cheaper than the motel the Department directed her to stay at. Thus, the petitioner argues, her liability to repay GA should be reduced by $100 a week, which the petitioner alleges is about $1,200 for the three month period at issue.

ORDER

The Department's decision is affirmed.

REASONS

The Department's authority to withhold from a GA recipient's initial SSI check the amount of GA that has been paid by the Department to that recipient during the pendency of that recipient's application for SSI is set forth in W.A.M. § 2600(D) as follows:

> The GA applicant or GA household member who has a pending SSI application, or who is being referred by the

> Department to the Social Security Administration (SSA) to apply for SSI, must sign a Recovery of General Assistance Agreement which authorizes SSA to send the initial check to this Department so that the amount of GA received can be deducted. The deduction will be made regardless of the amount of the initial SSI check. The deduction shall be made for GA issued during the period from the first day of eligibility for SSI, or the day the Recovery of General Assistance Agreement is signed if later, to the date the initial SSI check is received by the Department.
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> . . .
>
> Any remainder due to the SSI recipient shall be sent to him/her by the Department within 10 days. . .

The petitioner in this case signed a Recovery of General Assistance Agreement in May 2002, and again in May 2003. It is clear that when she signed the more recent agreement she had either already applied for SSI or subsequently applied for it sometime prior to March 2004. Thus, the one-year limitation provisions in the agreement (*supra*) were not in effect.

The petitioner may be correct that the agreement did expire when the Social Security Administration made the initial payment on her SSI claim in June 2004, but the agreement stipulated that the Department was allowed to use this SSI payment to reimburse itself for the GA it had paid to the petitioner. Clearly, this provision means that any GA paid *after* the initial payment of SSI is not subject to

reimbursement. The petitioner's interpretation of this provision would mean that all such agreements would be rendered ineffective by the very action that is supposed to trigger them. Nothing in the plain language of the agreement, and certainly not the regulation, supports such a nonsensical result.

The petitioner's other argument is also untenable. Even if it is found that a cheaper motel was available to her, and that she brought that fact to the Department's attention in a timely manner, the Department nonetheless has the inherent discretion under the regulations to choose "suitable" temporary housing for its GA clients based on factors other than price alone. See W.A.M. § 2613.2. There is no question that the petitioner had the full benefit of this temporary housing for at least three months. Therefore, she does not have a sufficient legal or equitable basis to now claim that the Department must, in effect, reimburse her for the difference in cost for housing she claims could have been provided at a cheaper price.

The legal question for purposes of this appeal is whether the petitioner can prevent, or equitably estop, the Department from recouping the full amount of GA it paid to the petitioner based on the Department's failure to provide

her with less expensive temporary housing while she was on GA. The Board clearly has the power to make such a ruling, see Stevens v. Department of Social Welfare 159 Vt. 408, 620 A.2d 737 (1992), but in order to do so, the petitioner must show that all the elements necessary for estoppel are met.

The four essential elements of equitable estoppel are: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. Burlington Fire Fighter's Ass'n v. City of Burlington, 149 Vt. 293, 299 (1988); and Stevens, supra.

As noted above, the petitioner has not established that the Department had a legal duty under its regulations to place her in a cheaper motel. Nothing in the regulations creates a legally enforceable duty on the part of the Department to minimize any GA expenditure, whether or not the recipient has a pending application for SSI. There is also no question that the petitioner received the full "value" of the motel she did stay in. Therefore, it cannot be concluded

that the petitioner suffered a "detrimental reliance" on the Department's actions.

Inasmuch as the Department's decision in this matter was in accord with the regulations, the Board is bound by law to affirm. 3 V.S.A. §3091(d) and Fair Hearing Rule No. 17.

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